

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 463

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO OIL AND GAS; AMENDING SECTION 47-318, IDAHO CODE, TO REVISE DEFINITIONS, TO DEFINE TERMS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-319, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE AUTHORITY OF THE OIL AND GAS CONSERVATION COMMISSION, TO REVISE PROVISIONS RELATING TO THE CONFIDENTIALITY OF CERTAIN EXPLORATORY AND WILDCAT WELLS, TO PROVIDE FOR THE USE OF WELL LOGS AND DIRECTIONAL SURVEYS IN ACTIONS TO ENFORCE SPECIFIED PROVISIONS, TO CLARIFY THAT CERTAIN SPECIFIC AUTHORITY OF THE COMMISSION SHALL NOT LIMIT ITS GENERAL AUTHORITY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 47-325, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE ISSUANCE OF ATTACHMENTS BY DISTRICT COURTS, TO PROVIDE FOR THE ASSESSMENT OF CIVIL PENALTIES BY THE COMMISSION, TO PROVIDE THAT THE COMMISSION MAY BRING CIVIL ACTIONS FOR CERTAIN VIOLATIONS AND THREATS TO VIOLATE, TO PROVIDE FOR CERTAIN DAMAGES, TO REMOVE PROVISIONS RELATING TO THE SUBSTITUTION OF THE COMMISSION FOR PERSONS WHO HAVE BROUGHT SUITS, TO PROVIDE THAT CERTAIN CONDUCT SHALL CONSTITUTE A MISDEMEANOR, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR THE DISCRETION OF THE COMMISSION RELATING TO MINOR VIOLATIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 47-326, IDAHO CODE, TO REMOVE PROVISIONS RELATING TO ACTIONS AGAINST THE COMMISSION AND APPEALS, TO REVISE PENALTY PROVISIONS RELATING TO THE FALSIFICATION OF CERTAIN RECORDS AND TO CLARIFY APPLICABILITY RELATING TO LIMITATIONS ASSOCIATED WITH THE COMMENCEMENT OF CERTAIN ACTIONS; AMENDING SECTION 47-328, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE CONSTRUCTION OF SPECIFIED LAW AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 47-318, Idaho Code, be, and the same is hereby amended to read as follows:

47-318. DEFINITIONS. Unless the context otherwise requires, the terms defined in this section shall have the following meaning when used in this act:

(a) ~~The word "Commission" shall mean~~ the oil and gas conservation commission.

(b) ~~"Waste" as applied to oil means and includes underground waste, inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage, and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use and sale; the locating, drilling, equipping, operating, or~~

producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations "Condensate" means the liquid produced by the condensation of a vapor or gas either after it leaves the reservoir or while still in the reservoir.

(c) "Waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced, excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells "Correlative rights" means the owners' or producers' just and equitable share in a pool.

(d) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders "Field" means the general area underlaid by one (1) or more pools.

(e) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir "Gas" means any petroleum hydrocarbon existing in the gaseous phase.

(f) "Gas" means all natural gas and all other fluid hydrocarbons not hereinabove defined as oil, including condensate because it originally was in the gaseous phase in the reservoir "Market value" means the price at the time of sale, in cash or on terms reasonably equivalent to cash, for which the oil or gas should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus from either party. The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the producer's tax directly or indirectly.

(g) "Condensate" means liquid hydrocarbons that were originally in the gaseous phase in the reservoir "Oil" or "crude oil" means petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and are not the result of gas condensation before or after it leaves the reservoir.

(h) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool "Oil and gas" means oil or gas or both.

(i) "Field" means the general area underlaid by one or more pools "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom, either for himself or for himself and others.

(j) ~~"Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas that he produces therefrom, either for himself or for himself and others~~ "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders.

(k) ~~"Producer" means the owner of a well or wells capable of producing oil or gas or both~~ "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool.

(l) ~~"Just and equitable share of the production" means, as to each person, that part of the production from the pool that is substantially in the proportion that the amount of recoverable oil or gas or both in the developed area of his tract or tracts in the pool bears to the recoverable oil or gas or both in the total of the developed areas in the pool~~ "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(m) ~~"Developed area" means a spacing unit on which a well has been completed that is capable of producing oil or gas, or the acreage that is otherwise attributed to a well by the commission~~ "Reservoir" means a subsurface volume of porous and permeable rock in which oil or gas has accumulated.

(n) ~~"Correlative rights" means the owners' or producers' just and equitable share in a pool~~ "Waste" as applied to gas shall include the escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing and testing of wells and in furnishing power for the production of wells.

(o) ~~"Oil and gas" means oil or gas or both~~ "Waste" as applied to oil means and includes underground waste; inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use and sale; the locating, drilling, equipping, operating or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations.

(p) The use of the plural includes the singular, and the use of the singular includes the plural.

SECTION 2. That Section 47-319, Idaho Code, be, and the same is hereby amended to read as follows:

47-319. LAND SUBJECT TO ACT -- AUTHORITY OF COMMISSION. (a) This act shall apply to all lands located in the state, however owned, including any

lands owned or administered by any government or any agency or political subdivision thereof, over which the state under its police power, has jurisdiction.

(b) The commission is authorized and it is its duty to prevent waste of oil and gas and to protect correlative rights, and otherwise to administer and enforce this act. It has jurisdiction over all persons and property necessary for that purpose. In the event of a conflict, the duty to prevent waste is paramount.

(c) The commission is authorized to make such investigations as it deems proper to determine whether action by the commission in discharging its duties is necessary.

(d) Without limiting its general authority, the commission shall have the specific authority to require:

~~To require:~~

(1) ~~Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil and gas;~~

(2) ~~The taking and preservation of samples and the making and filing with the commission of true and correct copies of well logs and directional surveys both in form and content as prescribed by the commission; provided, however, that logs of exploratory or wildcat wells marked confidential shall be subject to disclosure according to chapter 3, title 9, Idaho Code, and shall be kept confidential by the commission for a period of one (1) year from the date of filing the log with the commission. And provided that the commission may use any well logs and directional surveys in any action to enforce the provisions of this chapter or any order or rule adopted hereunder. And provided further, that after four (4) months from the effective date of this act, the commission may require the owner of a well theretofore drilled for oil or gas to file within four (4) months of such order a true and correct copy of the log or logs of such well;~~

(3) ~~The drilling, casing, operation and plugging of wells in such manner as to prevent (a) the escape of oil or gas out of one (1) pool into another, (b) the detrimental intrusion of water into an oil or gas pool that is avoidable by efficient operations, (c) the pollution of fresh water supplies by oil, gas, or salt water, (d) blow-outs, cavings, seepages, and fires, and (e) waste as hereinabove defined;~~

(4) ~~The taking of tests of oil or gas wells;~~

(5) ~~The furnishing of a reasonable performance bond with good and sufficient surety, conditioned upon the performance of the duty to comply with the requirements of this law and the regulations of the commission with respect to the drilling, maintaining, operating and plugging of each well drilled for oil or gas;~~

(6) ~~That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be measured by means and upon standards that may be prescribed by the commission;~~

(7) ~~That wells not be operated with inefficient gas-oil or water-oil ratios, and to fix these ratios, and to limit production from wells with inefficient gas-oil or water-oil ratios;~~

(8) ~~Metering or other measuring of oil, gas, or product;~~

(9) ~~That~~ every person who produces oil or gas in the state keep and maintain for a period of five (5) years complete and accurate records of the quantities thereof, which records, or certified copies thereof, shall be available for examination by the commission or its agents at all reasonable times within said period, and that every such person file with the commission such reasonable reports as it may prescribe with respect to such oil or gas production;

(10) ~~The~~ filing of reports of plats with the commission that it may prescribe.

(e) Without limiting its general authority, the commission shall have the specific authority to regulate:

(1) ~~The~~ drilling and plugging of wells and all other operations for the production of oil or gas;

(2) ~~The~~ shooting and treatment of wells;

(3) ~~The~~ spacing or locating of wells;

(4) ~~Operations~~ to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into a producing formation; and

(5) ~~The~~ disposal of salt water and oil-field wastes. To classify and reclassify pools as oil, gas, or condensate pools, or wells as oil, gas, or condensate wells. To make and enforce rules, regulations, and orders reasonably necessary to prevent waste, protect correlative rights, to govern the practice and procedure before the commission, and otherwise to administer this act.

SECTION 3. That Section 47-325, Idaho Code, be, and the same is hereby amended to read as follows:

47-325. POWERS OF COMMISSION -- WITNESSES -- PENALTY. (a) The commission shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it.

(b) In case of failure or refusal on the part of any person to comply with a subpoena issued by the commission, or in case of refusal of any witness to testify as to any matter regarding which he may be interrogated, any district court in the state, upon the application of the commission, may ~~in term time or vacation~~ issue an attachment for such person and compel him to comply with such subpoena, and to attend before the commission and produce such records, books, and documents for examination, and to give his testimony. Such court shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

(c) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated hereunder may be assessed a civil penalty by the commission or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each violation and shall be liable for reasonable attorney's fees. Each day the violation continues shall constitute a separate and additional violation, punishable by separate and additional civil penalties in like amount or other civil penalties as determined by the commission.

1 (1) Assessment of a civil penalty may be made in conjunction with any
 2 other commission administrative action.

3 (2) No civil penalty may be assessed unless the person charged was given
 4 notice and opportunity for a hearing pursuant to chapter 52, title 67,
 5 Idaho Code.

6 (3) If the commission is unable to collect such penalty or if any person
 7 fails to pay all or a set portion of the civil penalty as determined by
 8 the commission, it may recover such amount by action in the appropriate
 9 district court.

10 (4) Any person against whom the commission has assessed a civil penalty
 11 under the provisions of this section may, within twenty-eight (28) days
 12 of the final action by the agency making the assessment, appeal the as-
 13 essment to the district court of the county in which the violation is
 14 alleged by the commission to have occurred pursuant to chapter 52, title
 15 67, Idaho Code.

16 (5) All civil penalties collected pursuant to this section shall be re-
 17 mitted to the oil and gas conservation fund.

18 (d) Whenever it shall appear that any person is violating or threaten-
 19 ing to violate any provision of this act or any rule, regulation, or order
 20 made hereunder, the commission shall may bring suit a civil action in the
 21 name of the state against such person in the district court in the county
 22 of the residence of the defendant, or in the county of the residence of any
 23 defendant, if there be more than one (1) defendant, or in the county where the
 24 violation is alleged to have occurred, to restrain such person from contin-
 25 uing such violation or from carrying out the threat of violation. In such
 26 suit, the court may grant injunctions, prohibitory and mandatory, includ-
 27 ing temporary restraining orders and temporary injunctions. In such suit,
 28 the commission may seek damages to recover costs caused by such violation
 29 including, but not limited to, costs of well control, spill response and
 30 cleanup, restoration of fresh waters, well plugging and abandonment, and
 31 reclamation of surface disturbance.

32 (de) Nothing in this act, and no suit by or against the commission, and
 33 no violation charged or asserted against any person under any provisions of
 34 this act, or any rule, regulation or order issued hereunder, shall impair or
 35 abridge or delay any cause of action for damages which any person may have or
 36 assert against any person violating any provision of this act, or any rule,
 37 regulation, or order issued thereunder. Any person so damaged by the viola-
 38 tion may sue for and recover such damages as he otherwise may be entitled to
 39 receive. In the event the commission shall fail to bring suit to enjoin any
 40 actual or threatened violation of this act, or of any rule, regulation or or-
 41 der made hereunder, then any person or party in interest adversely affected
 42 and who has, ten (10) days or more prior thereto, notified the commission in
 43 writing of such violation or threat thereof and has requested the commis-
 44 sion to sue, may, to prevent any or further violation, bring suit for that
 45 purpose in the district court of any county in which the commission could
 46 have brought suit. If, in such suit, the court holds that injunctive relief
 47 should be granted, then the commission shall be made a party and shall be sub-
 48 stituted for the person who brought the suit, and the injunction shall be is-
 49 sued as if the commission had at all times been the complaining party.

(f) Any person who knowingly violates any provision of this chapter, or any of the rules promulgated hereunder for carrying out the provisions of this chapter, or who fails or refuses to comply with any requirements herein specified, or who interferes with the commission, its agents, designees or employees in the execution or on account of the execution of its or their duties under this chapter or rules promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five thousand dollars (\$5,000) or be imprisoned in a county jail for not more than twelve (12) months, or be subject to both such fine and imprisonment.

(g) Nothing in this chapter shall be construed as requiring the commission to report minor violations for prosecution when it believes that the public interest will be best served by suitable warnings or other administrative action.

SECTION 4. That Section 47-326, Idaho Code, be, and the same is hereby amended to read as follows:

47-326. ~~ACTIONS AGAINST THE COMMISSION -- APPEALS -- FALSIFICATION OF RECORDS -- LIMITATION OF ACTIONS.~~ (a) ~~Any person adversely affected by any rule, regulation or order made or issued under this act, may within ninety (90) days after the entry thereof bring a civil suit or action against the commission in the district court of Ada county, or in the district court of the county in which the complaining person resides, or in the U.S. district court for Idaho (if it otherwise has jurisdiction), and not elsewhere, to test the validity of any provision of this act, or rule, regulation or order, or to secure an injunction or to obtain other appropriate relief, including all rights of appeal.~~

~~(b) An action or appeal involving any provision of this act, or a rule, regulation or order shall be determined as expeditiously as feasible. The trial court shall determine the issues on both questions of law and fact and shall affirm or set aside such rule, regulation or order, or remand the cause to the commission for further proceedings. Such court is hereby authorized to enjoin permanently the enforcement by the commission of this act, or any part thereof, or any act done or threatened thereunder, if the plaintiff shall show that as to him the act or conduct complained of is unreasonable, unjust, arbitrary or capricious, or violates any constitutional right of the plaintiff or if the plaintiff shows that the act complained of does not constitute or result in waste, or does not in a reasonable manner accomplish an end that is the subject matter of this act.~~

~~(c) Any person who, for the purpose of evading this act or any rule, regulation or order of the commission shall make or cause to be made any false entry in any report, record, account, or memorandum required by this act, or by any such rule, regulation or order, or shall omit, or cause to be omitted, from any such report, record, account, or memorandum, full, true and correct entries as required by this act, or by any such rule, regulation or order, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account, or memorandum, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term not exceeding ~~six~~ twelve (~~6~~12) months, or to both such fine and imprisonment.~~

1 (db) No suit, action or other proceeding based upon a violation of this
2 act or any rule, regulation or order of the commission hereunder shall be
3 commenced or maintained unless same shall have been commenced within one (1)
4 year from date of the alleged violation. Provided however, the provisions
5 of this subsection shall not apply to actions governed by the provisions of
6 chapter 52, title 67, Idaho Code.

7 SECTION 5. That Section 47-328, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 47-328. ACT NOT CONSTRUED TO RESTRICT PRODUCTION. It is not the intent
10 or purpose of this law to require the proration or distribution or the pro-
11 duction of oil and gas among the fields of Idaho on the basis of market de-
12 mand. This act shall never be construed to require, permit, or authorize the
13 commission or any court to make, enter, or enforce any order, rule, regula-
14 tion or judgment requiring restriction of production due to market demand of
15 any pool or of any well (except as provided in section 47-319, Idaho Code,
16 hereof) to an amount less than the well or pool can produce without waste in
17 accordance with sound engineering practices.

18 SECTION 6. An emergency existing therefor, which emergency is hereby
19 declared to exist, this act shall be in full force and effect on and after its
20 passage and approval.